



House of Representatives

General Assembly

File No. 430

January Session, 2017

Substitute House Bill No. 7138

House of Representatives, April 5, 2017

The Committee on Transportation reported through REP. GUERRERA of the 29th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING LEGISLATIVE OVERSIGHT OF MAJOR TRANSPORTATION PROJECTS AND PLANNING.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. (NEW) (*Effective October 1, 2017*) As used in this section
2 and sections 2 to 4, inclusive, of this act:

3 (1) "Transportation project" means any planning, capital or
4 operating project with regard to transportation undertaken by the state
5 on and after July 1, 2018, that requires any authorization of bonds,
6 appropriation, allocation or allotment of moneys by the state, but shall
7 not include (A) any project funded by the state where the estimated
8 cost of such project is less than the threshold limit to qualify for the
9 loan program established by the Transportation Infrastructure Finance
10 and Innovation Act of 1998, (B) any project funded in part with money
11 from the federal government or a federal agency where the estimated
12 total cost of such project to the state is less than twenty per cent of the
13 threshold limit to qualify for such loan program, or (C) any repair,
14 improvement, alteration or replacement of roads, bridges and rail

15 which, in the opinion of the Commissioner of Transportation,
16 constitutes a threat to public safety; and

17 (2) "Council" means the Transportation Council established
18 pursuant to section 2 of this act.

19 Sec. 2. (NEW) (*Effective October 1, 2017*) (a) There is established a
20 Transportation Council, which shall be part of the Executive
21 Department.

22 (b) The council shall consist of the following members:

23 (1) One appointed by the speaker of the House of Representatives;

24 (2) One appointed by the president pro tempore of the Senate;

25 (3) One appointed by the majority leader of the House of
26 Representatives;

27 (4) One appointed by the majority leader of the Senate;

28 (5) One appointed by the minority leader of the House of
29 Representatives;

30 (6) One appointed by the minority leader of the Senate;

31 (7) The Commissioner of Transportation;

32 (8) The Commissioner of Economic and Community Development;

33 (9) The Commissioner of Energy and Environmental Protection;

34 (10) The Commissioner of Housing; and

35 (11) The Comptroller.

36 (c) Any member of the council appointed under subdivision (1), (2),
37 (3), (4), (5) or (6) of subsection (b) of this section may be a member of
38 the General Assembly.

39 (d) All initial appointments to the council shall be made not later

40 than December 1, 2017. Any vacancy shall be filled by the appointing
41 authority.

42 (e) The Commissioner of Transportation shall serve as the
43 chairperson of the council. The chairperson shall schedule the first
44 meeting of the council, which shall be held not later than February 1,
45 2018.

46 (f) The council shall be within the Department of Transportation for
47 administrative purposes only.

48 (g) The terms of the appointed members of the council shall be
49 coterminous with the terms of the appointing authority for each
50 member and subject to the provisions of section 4-1a of the general
51 statutes. Any vacancy on the council shall be filled by the appointing
52 authority.

53 (h) A majority of the council shall constitute a quorum for the
54 transaction of any business.

55 (i) The members of the council shall serve without compensation,
56 but shall, within the limits of available funds, be reimbursed for
57 expenses necessarily incurred in the performance of their duties.

58 (j) The council shall have the following powers and duties:

59 (1) To develop and revise biennially a comprehensive four year
60 transportation plan for the state. Such plan shall include specific
61 transportation projects and be designed to fulfill the present and future
62 needs of the state and assure the development and maintenance of an
63 adequate, safe and efficient transportation system. Such council shall
64 give particular consideration to promoting economic development and
65 transit-oriented development. In developing and revising such plan,
66 the council shall hold at least one public hearing. Such plan and any
67 revisions to such plan shall become effective when approved by a
68 majority of the council;

69 (2) To obtain from any executive department, board, commission or

70 other agency of the state such assistance and data as necessary and
71 available to carry out the purposes of this section; and

72 (3) To perform such other acts as may be necessary and appropriate
73 to carry out the duties described in this section.

74 (k) The council shall meet at least six times per year and at such
75 other times as the chairperson or a majority of the council deem
76 necessary. Any appointed member who fails to attend three
77 consecutive meetings or who fails to attend fifty per cent of all
78 meetings held during any calendar year shall be deemed to have
79 resigned from the council.

80 (l) The council may establish no more than two advisory committees
81 at any one time to advise the council in carrying out its duties. Such
82 advisory committee shall be composed of transportation professionals,
83 advocates and other interested stakeholders, and shall terminate
84 within sixty days of its commencement. The council may request
85 opinions from such advisory committee regarding any transportation
86 project.

87 (m) The council may enter into contractual agreements as may be
88 necessary for the discharge of its duties, within the limits of its
89 appropriated funds and in accordance with established procedures.

90 Sec. 3. (NEW) (*Effective October 1, 2017*) (a) The joint standing
91 committee of the General Assembly having cognizance of matters
92 relating to finance, revenue and bonding may not propose legislation
93 to implement or fund transportation projects, unless such
94 transportation projects are included in the plan approved by the
95 council pursuant to section 2 of this act.

96 (b) The General Assembly may not authorize bonds of the state or
97 appropriate funds for transportation projects, unless such
98 transportation projects are included in the plan approved by the
99 council pursuant to section 2 of this act.

100 Sec. 4. Subsection (a) of section 4-9a of the general statutes is

101 repealed and the following is substituted in lieu thereof (*Effective*
102 *October 1, 2017*):

103 (a) The Governor shall appoint the chairperson and executive
104 director, if any, of all boards and commissions within the Executive
105 Department, except the State Properties Review Board, the State
106 Elections Enforcement Commission, the Commission on Human
107 Rights and Opportunities, the Commission on Fire Prevention and
108 Control, [and] the Citizen's Ethics Advisory Board and the
109 Transportation Council.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2017</i>	New section
Sec. 2	<i>October 1, 2017</i>	New section
Sec. 3	<i>October 1, 2017</i>	New section
Sec. 4	<i>October 1, 2017</i>	4-9a(a)

Statement of Legislative Commissioners:

In Section 2(e), "2017" was changed to "2018" for accuracy.

TRA *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 18 \$	FY 19 \$
Transportation, Dept.	Federal Funds - Uncertain	See Below	See Below
Department of Transportation	TF - Cost	Potential Minimal	Potential Minimal

Note: TF=Transportation Fund

Municipal Impact: None

Explanation

The bill establishes a Transportation Council as part of the executive branch and within the Department of Transportation (DOT) for administrative purposes only. The Council is responsible for developing a four-year comprehensive transportation plan for the state, which must include specific "transportation projects," as defined in the bill. The Council members are not paid, but can be reimbursed for necessary expenses incurred which may result in a potential minimal cost to DOT.

The bill also prohibits the (1) Finance, Revenue, and Bonding Committee from proposing any legislation to implement or fund any transportation projects that are not included in the council's four-year plan and (2) legislature from authorizing bonds or appropriating funds for any transportation projects that are not included in the council's plan. The DOT is already required to develop a four-year state transportation improvement program (STIP) according to a process prescribed in federal law. The bill is unclear how the plan differs from, or will align with, the STIP and therefore it is unclear if this bill will

impact federal funding for transportation projects.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future dependent on the actions of the Council.

OLR Bill Analysis**sHB 7138*****AN ACT CONCERNING LEGISLATIVE OVERSIGHT OF MAJOR TRANSPORTATION PROJECTS AND PLANNING.*****SUMMARY**

This bill establishes an 11-member Transportation Council as part of the executive branch and within DOT for administrative purposes only. It charges the council with developing a four-year comprehensive transportation plan for the state, which must, among other things, include specific “transportation projects,” as defined in the bill.

The bill prohibits the (1) Finance, Revenue, and Bonding Committee from proposing any legislation to implement or fund any transportation projects that are not included in the council’s four-year plan and (2) legislature from authorizing bonds or appropriating funds for any transportation projects that are not included in the council’s plan. It is unclear whether these provisions are enforceable on future legislatures (see BACKGROUND), and they may be vulnerable to claims that they are an unconstitutional delegation of legislative power (see COMMENT).

Under the bill, a “transportation project” is any planning, capital, or operating project related to transportation that (1) the state begins on or after July 1, 2018 and (2) requires bond authorizations or any appropriation, allocation, or allotment of money by the state. “Transportation project” does not include:

1. a state-funded project (presumably, this means entirely state-funded) with an estimated cost that is too low to qualify for the loan program established by the federal Transportation Infrastructure Finance and Innovation Act (TIFIA) of 1998 (see

BACKGROUND);

2. a partially federally-funded project with an estimated state cost that is less than 20% of the cost threshold for the project to qualify for TIFIA; or
3. any repair, improvement, alteration, or replacement of roads, bridges, and rail that the DOT determines is a threat to public safety.

EFFECTIVE DATE: October 1, 2017

TRANSPORTATION COUNCIL

Council Membership and Procedure

Under the bill, the council has 11 members, five of whom serve ex-officio: the DOT commissioner, who acts as the chairperson; the Comptroller; and the commissioners of economic and community development, energy and environmental protection, and housing. The other six members are each appointed by one of the six legislative leaders.

Under the bill, any legislative appointee can be a member of the General Assembly. Such an appointment may violate a constitutional ban on legislators holding positions in the executive branch (see COMMENT). Appointees serve at the pleasure of, and their terms are coterminous with, their appointing authorities. Any appointee who misses three consecutive meetings or 50% of the meetings in a calendar year is considered to have resigned from the council. All vacancies are filled by the appointing authority.

The bill requires initial appointments to be made by December 1, 2017, and the DOT commissioner to schedule the council's first meeting, which must be held before February 1, 2018. The council must meet at least six times a year and at any other time deemed necessary by the DOT commissioner or a majority of the members. A majority of the council constitutes a quorum for conducting business.

Council members are not paid, but can be reimbursed, within available funding, for necessary expenses they incur.

Council Powers and Duties

The bill requires the council to develop and revise biennially a comprehensive four-year transportation plan for the state. To do so, it authorizes the council to do the following:

1. obtain from any executive branch agency, board, commission, or other state agency any data or assistance it needs;
2. enter into contracts, within the limits of appropriated funds and established procedures; and
3. perform any other necessary and appropriate acts.

The council may also establish up to two advisory committees at a time to advise it, including providing opinions on any transportation project. Any committee it establishes must consist of transportation professionals, advocates, and other interested stakeholders. Advisory committees terminate within 60 days after they start.

Four-Year Transportation Plan

The four-year plan the bill requires the council to create must do the following:

1. include specific transportation projects, as defined in the bill;
2. be designed to fulfill present and future state transportation needs;
3. ensure the development and maintenance of an adequate, safe, and efficient transportation system.

The bill requires the council, in developing and revising the plan, to (1) consider, in particular, promoting economic development and transit-oriented development and (2) hold at least one public hearing. Under the bill, the plan and any revisions to it are effective when

approved by a majority of the council.

As a condition of federal funding, states are already required to develop a four-year state transportation improvement program (STIP) according to a process prescribed in federal law (see BACKGROUND). It is unclear how the plan required by the bill differs from, or will align with, the STIP.

BACKGROUND

Legislative Entrenchment

Legislative entrenchment refers to one legislature restricting a future legislature's ability to enact legislation. For example, CGS § 2-35 previously prohibited appropriations bills from containing general legislation. This provision has since been repealed. In *Patterson v. Dempsey*, 152 Conn. 431 (1965), the Connecticut Supreme Court held that this provision of CGS § 2-35 was unenforceable, writing that, “to hold otherwise would be to hold that one General Assembly could effectively control the enactment of legislation by a subsequent General Assembly. This obviously is not true, except where vested rights, protected by the constitution, have accrued under the earlier act. ”

TIFIA Thresholds

In order to be eligible for TIFIA financing, a project’s estimated costs must generally equal or exceed the lesser of (1) \$50 million or (2) 33 ⅓ % of the amount of federal highway funds apportioned to the state in the most recent fiscal year. Exceptions include local infrastructure projects and transit oriented development projects, the cost of which must exceed \$10 million to be TIFIA eligible.

STIP

Under federal law, and as a condition for federal funding, every state must conduct a statewide planning process to develop a 20-year statewide transportation plan to, among other things:

1. support the economic vitality of the United States, the states, and

metropolitan and nonmetropolitan areas, especially by enabling global competitiveness, productivity, and efficiency;

2. increase the safety and security of the transportation system for motorized and nonmotorized users;
3. protect and enhance the environment, promote energy conservation, and improve consistency between the state's transportation improvements and state growth and economic development patterns;
4. increase the accessibility and mobility of people and freight; and
5. enhance the integration and connectivity of the transportation system (49 USC § 5304).

The state must also develop a four-year state transportation improvement program (STIP) that implements the goals of the statewide transportation plan and includes a list of projects the state plans to implement over the four-year period covered by the STIP. Among other things, the STIP development process must (1) include local involvement (i.e., the metropolitan planning organizations and other nonmetropolitan local transportation officials) and (2) provide an opportunity for the public to comment on the plan.

The STIP can only include projects that DOT reasonably believes will be funded, and projects generally must be included in the STIP to receive federal funding.

COMMENT

Delegation of Legislative Power

The separation of powers doctrine generally prohibits a legislature from delegating powers that are strictly, or inherently and exclusively legislative. Purely legislative power has been described as the authority to make a complete law. Thus, the legislature may not delegate its power to enact, suspend, or repeal laws. Nor may it delegate such essential elements of its lawmaking power as its power

to declare principles and standards, or general public policy (*Lee v. Delmont*, 228 Minn. 101 (1949); *Knight and Wall Co. v. Bryant*, 178 So. 2d 5 (1965); *Nahlen v. Woods*, 255 Ark. 974 (1974); 16 Am. Jur. 2D, Constitutional Law, § 337).

This bill creates an executive branch council and restricts which projects the legislature can fund to those approved by the council. Thus, it could conceivably constitute an impermissible delegation of legislative power if authorizing funding for state projects is considered to be a strictly legislative power.

Dual Job Ban

Connecticut has both a constitutional and statutory ban against legislators accepting or holding positions or offices in the executive or judicial branch, in Congress, or with the federal government (Conn. Const., art. III § 11; CGS § 2-5). Because this bill allows legislators to be appointed to a council that is explicitly part of the executive branch, the bill may violate the dual job ban.

COMMITTEE ACTION

Transportation Committee

Joint Favorable Substitute

Yea 19 Nay 16 (03/17/2017)